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EXAMINER

STRIMBU, GREGORY J

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 09/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/900,442

Applicant(s)

REITHMEYER ET AL.

Examiner

Gregory J. Strimbu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2003 and 17 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 16-39, 45 and 46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 40-44, 47 and 48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Election/Restrictions

Claims 16-39, 45 and 46 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 8.

Claim Rejections - 35 USC § 112

Claims 1-15 and 40-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "a frame" on line 3 of claim 1 render the claims indefinite because it is unclear if the applicant is referring to the frame set forth above or is attempting to set forth another frame in addition to the one set forth above. It is suggested that the applicant change the first occurrence of "a" on lines 3 and 9 to --the-- to agree with the recitations of "a slab" and "a frame" on line 1 of claim 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Headrick in view of Fehr, Hellstrom et al. and Synder. Headrick discloses an

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entryway system comprising a frame 11, 52 and a header (not shown) including a peripheral weather strip (not shown, but see column 6, lines 21-23) positioned on both sides of the frame, the frame bottom additionally comprising an extruded aluminum threshold member 12 joined to the frame with an end cap corner key 36 positioned between the frame and the threshold member, the threshold forming a tank 27 such that the threshold member can accumulate and drain environmental water to the exterior of the frame, and a slab 54 mounted on the frame with a hinge member 56, a sealing element 43 positioned between the end cap corner key and the water tank. Headrick is silent concerning a weather strip positioned substantially on the bottom of the frame and an adjustable hinge.

However, Fehr discloses a weather strip 5 positioned substantially on the bottom 15 of a frame and a top 16 of the frame.

It would have been obvious to one of ordinary skill in the art to provide Headrick with a weather strip, as taught by Fehr, to better seal the slab with respect to the frame.

Additionally, Hellstrom discloses a vertically adjustable hinge.

It would have been obvious to one of ordinary skill in the art to provide Headrick with a hinge, as taught by Hellstrom, to provide an easy means for vertically adjusting the height of the door with respect to the frame.

Finally, Snyder discloses the use of a shim 19 for adjusting a horizontal position of hinge 10.

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It would have been obvious to one of ordinary skill in the art to provide Headrick with a shim, as taught by Snyder, to horizontally adjust the position of the door with respect to the door frame.

With respect to claim 9, Headrick in view of Fehr, Hellstrom et al. and Synder disclose the claimed invention but for the shim mounted to the door. However it would have been obvious to one of ordinary skill in the art to mount the shim to the door, since it has been held that a mere reversal of the essential working parts of a device involves no more than routine skill in the art. *In re Einstein*, 8 USPQ 167.

Claims 4-7 and 40-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Headrick in view of Fehr, Hellstrom et al. and Synder as applied to claims 1-3 and 8-13 above, and further in view of Taber. Taber discloses a sealing means comprising a foamed polymeric seal 22.

It would have been obvious to provide, Headrick, as modified above, with a sealing means, as taught by Taber, to ensure that the frame members of the system are sealingly engaged.

With respect to claim 42, Headrick in view of Fehr, Hellstrom et al. and Synder disclose the claimed invention but for the shim mounted to the door. However it would have been obvious to one of ordinary skill in the art to mount the shim to the door, since it has been held that a mere reversal of the essential working parts of a device involves no more than routine skill in the art. *In re Einstein*, 8 USPQ 167.

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Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Headrick in view of Fehr, Hellstrom et al. and Synder as applied to claims 1-3 and 8-13 above. Headrick, as modified above, is silent concerning the specific adjustment range of the hinge.

However, one of ordinary skill in the art is expected to routinely experiment with parameters so as to ascertain the optimum or workable ranges for a particular use. Accordingly, it would have been no more than an obvious matter of engineering design choice, as determined through routine experimentation and optimization, for one of ordinary skill to provide the adjustable hinge with a range of adjustment of 0.2 to 10 mm to more accurately position the door within the door frame.

Claims 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Headrick in view of Fehr, Hellstrom et al. and Kurtz. Headrick discloses an entryway system comprising a frame 11, 52 and a header (not shown) including a peripheral weather strip (not shown, but see column 6, lines 21-23) positioned on both sides of the frame, the frame bottom additionally comprising an extruded aluminum threshold member 12 joined to the frame with an end cap corner key 36 positioned between the frame and the threshold member, the threshold forming a tank 27 such that the threshold member can accumulate and drain environmental water to the exterior of the frame, and a slab 54 mounted on the frame with a hinge member 56, a sealing element 43 positioned between the end cap corner key and the water tank. Headrick is

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silent concerning a weather strip positioned substantially on the bottom of the frame and an adjustable hinge.

However, Fehr discloses a weather strip 5 positioned substantially on the bottom 15 of a frame and a top 16 of the frame.

It would have been obvious to one of ordinary skill in the art to provide Headrick with a weather strip, as taught by Fehr, to better seal the slab with respect to the frame.

Additionally, Hellstrom discloses a vertically adjustable hinge.

It would have been obvious to one of ordinary skill in the art to provide Headrick with a hinge, as taught by Hellstrom, to provide an easy means for vertically adjusting the height of the door with respect to the frame.

Finally, Kurtz discloses a transition block 44 mounted to a door 18, a shim 51 positionable adjacent to the transition block.

It would have been obvious to one of ordinary skill in the art to provide Headrick with a shim system for horizontally adjusting a position of a door within a door frame, as taught by Kurtz, to more easily position the door with respect to the door frame.

With respect to claim 48, Headrick in view of Fehr, Hellstrom et al. and Kurtz disclose the claimed invention but for the shim mounted to the door. However it would have been obvious to one of ordinary skill in the art to mount the shim to the door, since it has been held that a mere reversal of the essential working parts of a device involves no more than routine skill in the art. *In re Einstein*, 8 USPQ 167.

Response to Arguments

Applicant's arguments filed August 19, 2003 have been fully considered but they are not persuasive.

With respect to the applicant's arguments concerning the motivation to combine the references of record, the examiner respectfully disagrees. The rationale to modify or combine the prior art does not have be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Since the applicant has failed to address the reasoning/rationale supplied by the examiner as to why the modification would have been obvious, the applicant's arguments are not persuasive. Additionally, it should be pointed out that Fehr is used only for the teaching of a weather stripping that extends around the perimeter of a door frame. No feature of the frame of Fehr is being combined with the teachings of Headrick. Finally, the applicant's argument concerning the "form fitting seal" of Fehr being unable to accommodate the protrusion of Headrick without modification is not persuasive because it is not supported by the claim language.

With respect to the applicant's concerning a sealing element placed between the end cap 36 of Headrick and the tank 27 of Headrick, the examiner respectfully disagrees. One with ordinary skill in the art, armed with the teachings of Taber, would clearly be motivated to place a seal between the U-shaped portion of the tank and the

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groove 43 of the end cap 36. In this position, the seal would prevent water from flowing from the tank, into the groove and back towards sill and thus, prevent water from flowing underneath the sill between the engagement between the tank and the groove.

Conclusion

THIS ACTION IS NOT MADE FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 703-305-3979. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3597 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.



Gregory J. Strimbu

Primary Examiner

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September 26, 2003